**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 1840/2005

NARENDRA & OTHERS.
v
MAHAVEER (DECEASED) THROUGH L.Rs.

Date of Judgment: 8th September, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. S.K. Gupta for the appellants.
Mr. Suresh Sahni with
Mr. Ram Mohan Sharma for the respondents.

By Court:

The appellants have challenged the order dated 5.4.2005 passed by the Addl. District Judge, Dholpur whereby the learned Judge has set aside the judgment dated 4.5.2001 passed by the Civil Judge (Sr. Division) Bari, District Dholpur.

The brief facts of the case are that on 26.7.96, the respondent No.1, Mahaveer, had filed a civil suit for declaration and permanent injunction against the appellants, wherein he had prayed that the disputed property, the 'Bada' situated in village Swamikapura be declared to be under his ownership and possession and that the defendants be restrained from dispossessing him from the said property. The defendants, the

appellants before us, filed a written statement on 28.1.97 and raised an objection that the said property was in the fields of defendant No.2 Jagannath. Jagannath is the Khatedar tenant of the disputed land. Since the suit relates to a Khatedari land, the suit could not be filed before the Civil Court. But, in fact it should be filed before the Revenue Court. Hence, the Civil Court does not have the jurisdiction to try the suit. The learned trial court framed six issues. Issue No.5 pertained to the jurisdiction of the Court. At the time of the final arguments, both the parties agreed that they should be heard on Issue no.5. After hearing both the sides, the learned trial court vide its order dated 4.5.2001 concluded that the matter relates to a Khatedari land and not to a “Abadi” land. Therefore, the Civil Court does not have the jurisdiction to try the suit. Therefore, he did not enter into the issue No. 1 to 4 and 6 but returned the plaint to the plaintiff-respondents and dismissed the suit and directed that a decree be drawn in terms of the judgment.

Since the respondents were aggrieved by the order dated 5.4.2001 they filed a regular appeal before the District Judge, Dholpur, which was subsequently, transferred to the

court of Addl. District Judge, Dholpur for decision. Vide judgment dated 5.4.05, the learned Judge concluded that although the disputed property is in Khasra No. 177, since the property is being used for non-agricultural purpose, it is considered as “Abadi” land. Hence, the Civil Court would have the jurisdiction to try the suit. Therefore, the learned Addl. District Judge allowed the appeal and set aside the order dated 5.4.2001 and remanded the case back to the trial court for deciding the suit on the basis of merits. Hence, this appeal before this Court.

Mr. S.K. Gupta, the learned counsel for the appellant, has argued that until and unless a land is converted from agricultural to non-agricultural purpose, the land per se continues to be an agricultural land. According to him no evidence has been brought on record to show that the land was converted from agricultural for a non-agricultural purpose. Moreover, the land continues to be shown in the revenue records as an agricultural land in the name of appellant No. 2. Hence, according to him the impugned order is illegal.

On the other hand, Mr. Suresh Sahni, the learned counsel for the respondents, has raised preliminary objection with regard to the maintainability of this appeal. For, according to him once a regular appeal has been filed and a decision has been rendered in the first regular appeal, only a second appeal is maintainable and not a civil miscellaneous appeal. However, when he was asked whether the land had ever been converted, he has fairly conceded that the land use was never converted.

We have heard both the learned counsels and have perused the impugned judgment.

Since Mr. Sahni has fairly conceded before us that there is no evidence that the land was ever converted, this Court need not to go into the maintainability of this appeal. Therefore, we leave that question open.

The word 'land' has been defined in Section 5(24) of the Rajasthan Tenancy Act, 1955 (henceforth to be referred to as 'the Act of 1955” for short) to mean land which is let or held for agricultural purposes or for purposes subservient thereto or

as grove land or for pasturage including land occupied by houses or enclosures situated on a holding, or land covered with water which may be used for the purpose of irrigation or growing singhara or other similar produce but excluding “abadi” land; it shall include benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. Therefore, the very definition emphasises the agricultural purposes of the land and excludes the “abadi” land. All land is agricultural in purposes until and unless converted by the appropriate authority for non-agricultural purposes. Therefore, before a land can be taken to be in “abadi” land, a conversion has to take place. In the present case, there is no evidence to show that the land in dispute has ever been converted from an agricultural land to an “abadi” land.

Moreover, according to Section 207 (1) of the Act of 1955, all suits and applications of the nature specified in the Third Schedule shall be heard and determined by a revenue court. Sub-section 2 of Section 207 of the Act of 1955 further declares that “no court other than a revenue court shall take

cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application". The Third Schedule attached to the Act of 1955 clearly shows that a suit for declaration of the plaintiff's right would lie to the revenue court. Hence, as the land in dispute was never converted, the suit can only lie to the revenue court and not to the civil court. Therefore, the impugned judgment dated 5.4.05 is clearly illegal.

In the result, this appeal is allowed and the judgment dated 5.4.05 passed by the Addl. District Judge, Dholpur is quashed and set aside. No order as to costs.

(R.S. CHAUHAN) J.

MRG.